

MEMPHIS AND SHELBY COUNTY OFFICE OF PLANNING AND DEVELOPMENT
STAFF REPORT – REFLECTING AMENDMENTS MADE BY L.U.C.B.

Agenda Item: 7

CASE NUMBER: **ZTA 13-004** **L.U.C.B. MEETING:** **December 12, 2013**

APPLICANT: **Memphis and Shelby County Office of Planning and Development**

REPRESENTATIVE: **Josh Whitehead, Planning Director**

REQUEST: **Adopt amendment to the**
 Memphis and Shelby County Unified Development Code

This set of amendments to the Unified Development Code (the “UDC”) continues the regular update to the Code that began with Case ZTA 12-001 in 2012. This case was taken to the October 2013 Land Use Control Board (the “LUCB”), but a request was made by a stakeholder to hold the case for further review. Since that time, staff has met with and consulted a group of stakeholders to come up with compromise language. This staff report reflects the revised language based on those consultations.

- **Item 1** deals with accessory structures and uses, including those permitted with places of worship and accessory dwelling units.
- **Item 2** deals with principal uses, particularly wreckers with impound lots.
- **Item 3** adds references to the various sections of the Code dealing with setbacks.
- **Item 4** corrects a discrepancy dealing with required open space at manufactured home parks.
- **Item 5** deals with new apartment buildings located in downtown, Midtown and the University District.
- **Item 6** deals with garage placement and setbacks for homes in the older sections of the City.
- **Item 7** deals with minimum lot sizes for lots without water and/or sewer in the non-residential zoning districts.
- **Item 8** deals with additions to existing buildings on streets with designated frontage.
- **Item 9** deals with parking and queuing requirements.
- **Item 10** reformats the fencing section of the UDC.
- **Item 11** will allow limited outdoor storage in the required side yard setback.
- **Item 12** deals with the sign code of the UDC; specifically, temporary signs and signs for places of worship.
- **Item 13** corrects an error with the section of the Code dealing with traffic calming devices.
- **Item 14** replaces narrative descriptions of individual zoning districts with references to the zoning atlas.
- **Item 15** deals with various procedures, including the types of cases that require Technical Review Committee review and to which bodies cases may be appealed.
- **Item 16** addresses the timing of neighborhood meetings prior to an LUCB meeting.
- **Item 17** deals with the review authority of the legislative bodies when hearing appeals of the LUCB.
- **Item 18** adds several needed definitions.
- **Item 19** adds editorial commentary to several sections of the Code.

These amendments can be read in greater context by downloading the entire UDC. It is available on this website: <http://www.shelbycountyttn.gov/Blog.aspx?CID=7> or by googling the terms “UDC,” “amendments” and “Memphis.”

OFFICE OF PLANNING AND DEVELOPMENT RECOMMENDATION:

Approval

Staff: *Josh Whitehead*

e-mail: josh.whitehead@memphistn.gov

Proposed language is indicated in **bold, underline**; deleted language is indicated in ~~strikethrough~~.

1. 2.7, et. al: Accessory Structures and Uses

a. Accessory Structures in the Side Yard

Paragraph 2.7.2A(4) of the Code prohibits any accessory structures from being located within the required side yard, except for a few items such as mechanical equipment. Corner residential lots, however, have two side yards: the conventional side yard to the side of the home and the rear yard (see Sub-Section 3.2.9B). Proposed language below would explicitly state that this provision would not apply to such corner lots.

No accessory structure shall extend into the required side yard setback, except for air conditioning and heating units, pool equipment and similar mechanical equipment. See also Sub-Section 3.2.9E, Encroachments. **This provision shall not apply to the side yard setback adjacent to the rear façade of homes on corner residential lots.**

Also, a reference to Sub-Section 2.7.2A needs to be added to 3.2.9E so the exceptions in 2.7.2A can be tracked by readers looking for permitted encroachments.

3.2.9E(1)(a): Accessory structures (as permitted in Chapter 2.7, Accessory Structures and Uses). **Air conditioning and heating units, pool equipment, flagpoles, bird baths, statues and other ornamental features, detached garages and other accessory structures may encroach into certain required yards, per Sub-Section 2.7.2A.**

b. Accessory Dwelling Units

Sub-Section 2.7.3B sets out the regulations for accessory dwelling units, which are sometimes known as guesthouses, granny flats or secondary suites. One of those regulations, found in Paragraph 2.7.3B(1), contains maximum sizes for these dwelling units. Currently, this paragraph sets an arbitrary limitation for sites that may have larger accessory dwelling units: home sites within the CA and RE zoning districts. The proposal below would create three categories of lots; this in turn will govern the size and legality of an accessory dwelling unit. For those lots under 10,000 square feet in size, no new accessory dwelling units would be permitted. Existing accessory dwelling units on lots of under 10,000 square feet would be permitted to remain; however, lots of that size currently without an accessory dwelling unit would not be allowed to add one. The second category would be for lots between 10,000 square feet and 1.5 acres. New accessory dwelling units would be permitted, but only if 700 square feet or smaller, depending on the ground floor size of the principal dwelling. Finally, lots of 1.5 acres or larger would be permitted larger accessory dwelling units, but they would need to also be tied to the ground floor size of the principal dwelling.

2.7.3(B)

1. The living area of the accessory dwelling unit may not exceed the living area of the principal structure.

a. **On residential lots of less than 10,000 square feet, no accessory dwelling units may be constructed after** [insert effective date of this ZTA; this will be the date 15 days after the third reading by the Board of County Commissioners or the approval of the minutes of the Memphis City Council's approval on third reading, whichever is later]. **No**

existing accessory dwelling units on lots of this size constructed prior to [insert effective date of this ZTA; this will be the date 15 days after the third reading by the Board of County Commissioners or the approval of the minutes of the Memphis City Council's approval on third reading, whichever is later], **may be enlarged or expanded in size.**

- b. **On residential lots of at least 10,000 square feet but less than 1.5 acres,** ~~In no case shall the total floor area of the accessory dwelling unit~~ **shall not** exceed 700 square feet, **or 1/3 of the ground floor area of the principal dwelling structure on the lot, whichever is smaller** ~~except in the RE and CA districts where the total floor area of the accessory dwelling unit may not exceed 1,000 square feet.~~
- c. **On residential lots of 1.5 acres or greater, the total floor area of the accessory dwelling unit shall not exceed 50% of the ground floor area of the principal dwelling structure on the lot.**

- 2. One additional parking space on the same premises shall be required **for each 500 square feet of an** ~~the~~ accessory dwelling unit, **with a maximum number of three additional parking spaces. Said parking spaces shall be located in the side or rear yards.**
- 3. An accessory dwelling shall **not** ~~either~~ be located within the principal structure ~~(and meet the principal structure setback and yard requirements); or meet the standards in Sub-Section 2.7.2 A above.~~
- 4. The height of a principal structure may not be exceeded by any accessory dwelling.
- 5. The accessory dwelling unit shall be architecturally consistent with the principal structure.
- 6. **No windows besides clerestory windows shall be permitted along any portion of the walls of an accessory dwelling unit that is within 10 feet of an abutting parcel that is zoned single-family residential.** [note: see proposed definition of "clerestory windows" below in this staff report]

c. Accessory Uses to Places of Worship

Sub-Section 2.7.5B currently requires places of worship to sit on a site of at least 10 acres to contain a gymnasium. 10 acres represents a very large site and essentially converts many existing places of worship currently with gymnasiums into nonconforming uses. The proposal below would limit the applicability of this section to places of worship of less than 20,000 square feet, which is the minimum lot size for future places of worship.

Similarly, Sub-Section 2.7.5D requires any place of worship that offers overnight accommodations to sit on a site of at least five acres in size. This has become an issue for many churches, particularly those associated with the Room-in-the-Inn program, those that engage in youth "lock ins" and those that offer emergency services, as was the case in the aftermath of Hurricane Katrina. There seems to be no rational basis between the size of a lot a place of worship sits on and whether overnight accommodations should be permitted. The following proposal would delete this section of the Code. The proposal described below in Item 1(d) of this staff report, which requires all accessory uses to be customary and incidental to the principal use, would prohibit places of worship from operating complete social service agencies, such as a homeless shelter, on their

sites. In addition to that section, Paragraph 2.7.5F(3) explicitly states that soup kitchens and other social services shall be considered as separate principal uses and are subject to the Use Table (Section 2.5). This would not prevent a place of worship from engaging in the Room-in-the-Inn program; however, it would prevent a place of worship from operating a permanent shelter.

2.7.5B: A gymnasium or similar indoor recreational facility is permitted provided that the minimum site size of the place of worship shall not be less than **20,000 square feet** ~~ten acres~~.

~~2.7.5D: Overnight accommodations for visitors and non-paying guests employed by the place of worship are permitted provided that the minimum site size of the place of worship shall not be less than five acres.~~

d. Accessory Uses Must be Customary and Incidental

Traditionally, any use that was considered “customary with and incidental to” a permitted principal use could be considered an acceptable accessory use to its principal use (see Sec. 4-26 of Yokley’s *Zoning Law and Practice*, Third Ed.). However, the UDC contains a set of relatively rigid tables that explicitly articulate acceptable accessory uses for each principal use. Unfortunately, this system does not allow for much flexibility. The language proposed below would give the Office of Planning and Development (“OPD”) the same ability to determine the appropriateness of accessory uses on a case-by-case basis as it currently has with principal uses. The proposed language below is copied from Paragraph 2.5.1B(1) of the Code, which deals with OPD’s discretion on unlisted principal uses and Sub-Section 2.7.1A, which spells out the requirement that an accessory use be clearly incidental and insubordinate to a principal use.

2.9.1B(2) Accessory uses are allowed by right in conjunction with a principal use as set forth in Sections 2.9.2 through 2.9.6 subject to the provisions of Chapter 2.7, Accessory Structures and Uses, unless otherwise expressly limited to special use permit elsewhere in this code. No accessory use may be established on a site prior to the establishment of a permitted principal use. **Any accessory use not specifically listed is expressly prohibited unless the Planning Director determines that a proposed accessory use is customary with and clearly incidental and subordinate to a permitted principal use.**

2. 2.9: Principal Uses

a. Wreckers in the Light Industrial (EMP) District

According to Sub-Section 2.9.5D, towing operators and wreckers with impound lots are considered as Heavy Industrial uses under the UDC, and are therefore only permitted in the IH District. Under the old Zoning Code, they were permitted in the Light Industrial District (the “IL” district), as well. This has created a great inconvenience for several towing operators who wish to improve their properties in the IL district. The proposal below would allow wrecking services with smaller impound lots, that meet the required minimum parking spaces under the City regulations, in the Light Industrial District (now known as the “EMP” district).

2.9.5D (in the exhaustive list of heavy industrial uses): Impound lot, wrecker service includes city wreckers, auto storage, **excluding those impound lots permitted under Sub-Section 2.9.5B**

2.9.5B (in the exhaustive list of light industrial uses): **Impound lots associated with wrecker services, either operated by the City or duly licensed by the City, that are at least 500 feet from any single-family residential uses and do not store inoperable vehicles**

b. Vehicle Sales, Leasing, Repair and Service

Sub-Section 2.9.4J of the Use Categories contains three specific uses: vehicle service, vehicle repair and vehicle sales and leasing. However, the words, “leasing” and “repair” are not included in the heading. This proposal would add those words to the heading.

Vehicle Sales, **Leasing, Repair** and Service
Direct sales of and service to passenger vehicles...

3. 3.1.1: Building envelope standards

Section 3.1.1 discusses building envelope standards. The proposal below would add two new sub-sections at the end of this section that would assist in understanding the various rules and regulations found in the UDC pertaining to setbacks. No substantive changes are proposed with this amendment.

3.1.1

F. Setbacks

1. Generally, all residential and non-residential structures are subject to a setback provision, requiring the primary structure and its associated structures to be a certain distance from the public right of way and property boundaries. For setback requirements for Special Purpose or Overlay Districts, see Articles 7 and 8, respectively.

2. Some residential structures are subject to Contextual Infill Standards. See Section 3.9.2.

3. Structures may also be subject to setbacks contained in the subdivision final plat or planned development final plan on record with the Shelby County Register of Deeds.

4. For specific setback requirements see the following:

a. Single-Family Districts: Section 3.6.1.

b. Permitted Non-Residential Uses in Single-Family Districts (i.e. schools, places of worship, etc.): Section 3.6.2.

c. Multi-Family Districts: Section 3.7.2.

d. Permitted Non-Residential Uses in Multi-Family District Districts (i.e. schools, places of worship, etc.): Section 3.7.

e. Open Space Subdivisions: Section 3.8.5.

f. Sustainable Subdivisions: Section 3.8.6.

g. Commercial and Industrial Districts: Section 3.10.2.

G. Special Purpose and Overlay Districts

Generally, developments in Special Purpose and Overlay Districts are not subject to Article 3. However such developments may be subject to Article 3 standards if a standard addressed in Article 3 is part of such a development and is not addressed in either Chapter 7 or Chapter 8.

4. 3.6.3D: Open Space in Manufactured Home Parks

Sub-Section 3.6.3D states that 35% of the acreage of residential manufactured home parks be open space. Sub-Section 6.2.1D, which is part of the Open Space section of the UDC, states that 20% of the acreage of residential manufactured home parks be open space. This proposal would change the former section to 20% since this aligns with open space requirements of other, similar types of developments.

3.6.3D: Open Space equal to 20% 35% of the total site area must be provided as either public or private common open space. Requirements for the configuration, use and management of common space are set forth in Chapter 6.2, Open Space.

5. 3.7.2, et al: Apartment Buildings

Under the existing language of the UDC, apartment buildings along designated streets, inside the Parkways and in the University District Overlay must not only be pulled up to the street it faces, but also any other abutting street. Therefore, 50% of a lot's length and width must be made up of building façade. This is sometimes impracticable, even for very urban, higher-density environments. For example, this author's home, located within the Carolina Condominiums, was built at the southwest corner of Madison and Idlewild in 1928 (see photograph below). It sits close to Madison, about 11 feet from the sidewalk, with parking in the rear. It is essentially the "ideal" UDC apartment building. However, while it has a building frontage of 84% along Madison (in other words, 84% of the lot along Madison is covered by building façade), its frontage along Idlewild is only 47%. Therefore, this very urban building would have required a variance under the UDC. Part of this proposal would be to eliminate the requirement that buildings contain a building frontage of at least 50% on its side street.



Carolina Condominiums at Madison and Idlewild. The frontage along Madison is 84%, but only 47% along Idlewild.

Sections 3.7.2, 3.7.3, 3.8.5 and 3.8.6:

[Footnote] 1. Front (max) and required building frontage only apply to those parcels in the CBID or Zone 1 depicted on Map 1 of Section 4.9.14 (i.e. inside the Parkways) or in the University District Overlay and shall be measured from and along any abutting primary street right-of-way and ~~any internal drive onto which the buildings front.~~
Required frontage along any abutting side street shall be 35%.

6. 3.9: Residential Compatibility

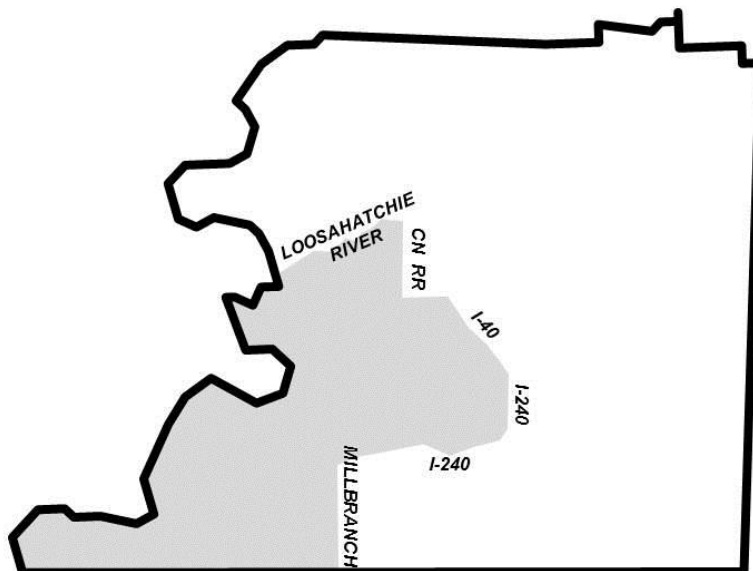
Sections 3.9.1 and 3.9.2 regulate the design and layout of single-family homes, which creates a logistical challenge for existing neighborhoods that were not designed in accordance with these guidelines, as they predated them. The language below would limit the applicability of this section to the older sections of the City, where such development should be required to be sensitive to their surrounding, established neighborhoods. The proposal would link Section 3.9.1 to Section 3.9.2, the section of the Code that covers infill subdivisions and requires heightened scrutiny by OPD, enabling the proper enforcement that Section 3.9.1 requires.

3.9.1A(1): The following garage and carport placement requirements apply to all housing types within any ~~district~~ **site subject to Section 3.9.2.**

In addition, Section 3.9.2 stipulates that all new residential developments in older sections of town (those built before 1950) shall respect the setbacks and widths of the lots around them. However, it uses the term “project,” but it should instead use the more appropriate term “subdivision.”

3.9.2B

1. The contextual infill development standards shall be used on any residential **site** ~~project~~ **without front setbacks indicated on its subdivision plat,** that is less than two acres in size, **that** and is **within the area identified on the map below and** abutted on two or more sides by existing single-family detached or single-family attached development lots platted or established before 1950 in a residential district...



2. Residential **sites** ~~projects~~ two acres or more in size shall follow the applicable district standards (see Chapter 3.6, 3.7, or 3.8).

7. 3.10.1C: Non-Single-Family Lots with no Water and/or Sewer

Currently, the UDC mandates that all single-family lots that do not have public water be at least 4 acres in size and that all single-family lots that do not have public sewer be at least 2 acres in size. However, the UDC is silent on minimum lot size for non-single-family uses. The proposal below would address this issue.

3.10.1C [new section]: Sites without public water in the mixed use and industrial districts shall be a minimum size of 4 acres, subject to the approval by the Shelby County Health Department. Sites with public water but without public sewer or an approved individual treatment facility in the mixed use and industrial districts shall be a minimum of 2 acres, subject to the approval by the Shelby County Health Department.

8. 3.11.1 Additions to Buildings on Streets with Designated Frontage

The overlay and special purpose districts have applied maximum setbacks along a few streets in the city, such as Danny Thomas, Madison, Union, Cooper and Highland. Maximum setbacks effectively require buildings to be built in close proximity to the street. However, there are many buildings along these roadways that pre-exist the overlay and special purpose districts and do not adhere to the maximum setbacks as mandated. Section 3.11.1 of the UDC allows for certain improvements to existing buildings, but, since the threshold provided in this section is tied to the percentage increase in footprint area, smaller properties have been unintentionally brought under the designated frontage requirements. See attached letter from Lauren McHugh, president of Huey's, concerning the expansion of their corporate headquarters at 1915 Madison (immediately to the west of their Madison Ave. restaurant). In addition to this situation occurring with Huey's headquarters, it was also an issue with Popeye's purchase of 1370 Union (the old Mrs. Winner's restaurant). Rather than adding on to the old Mrs. Winner's building and expanding the footprint of the building, Popeye's chose instead to utilize the existing building to avoid justifying a variance request to the Board of Adjustment. Both Madison and Union are streets with designated maximum setbacks.

3.11.1 Applicability

Any development where a maximum setback applies that involves an addition to a nonconforming structure or the construction of a new building(s) on a nonconforming site with an existing building and the addition or new construction represents an increase of more than 50% of the existing building footprint area **or an increase of 1500 square feet, whichever is greater**. Additions and new construction that **fall below this threshold** ~~represents an increase of less than 50% of the existing building footprint area~~ are not subject to the building setback, building frontage, floor elevation or floor height provisions of Sub-Section 3.10.2E, Section 3.10.3 or Articles 7 or 8 of this Code. In no instance shall maximum setbacks, nor this Chapter, apply to townhouses and multi-family buildings subject to Section 3.7.2 or permitted nonresidential uses subject to Section 3.7.3, provided that said buildings were constructed prior to January 1, 2011, and would otherwise be deemed conforming structures. See Chapter 10.8.

9. 4.5: Parking and Queuing

a. Parking

The table in 4.5.3B provides minimum parking requirements for most uses that are provided for in the UDC. However, the various types of funeral services are not included in this table. The following

proposal would set certain minimum parking requirements for the various types of funeral service establishments:

Funeral services: for funeral homes: 1 space per 10 seats; for any other funeral services: 1.0 space per 600 SF FA (square feet of floor area)

The current parking space regulations in Sub-Section 4.5.5A are both complicated and fail to include key dimensions. This proposal would replace all of the existing graphics in Sub-Section 4.5.5A with the following table:

Angle	Minimum Stall Width*	Minimum Stall Depth (perpendicular to curb)*	Minimum Width of Adjacent Drive Aisle**	Maximum Curb or Wheel Stop Overhang
0°	7 feet	19 feet, 6 inches	11 (one way)	2 feet, 6 inches
45°	8 feet, 6 inches	17 feet	11 feet (one way)	2 feet
50°	8 feet, 6 inches	17 feet	12 feet (one way)	2 feet
55°	8 feet, 6 inches	17 feet, 6 inches	13 feet (one way)	2 feet
60°	8 feet, 6 inches	17 feet, 6 inches	14 feet (one way)	2 feet, 6 inches
65°	8 feet, 6 inches	18 feet	15 feet (one way)	2 feet, 6 inches
70°	8 feet, 6 inches	18 feet	16 feet (one way)	2 feet, 6 inches
75°	8 feet, 6 inches	18 feet	18 feet (one way)	2 feet, 6 inches
90°	8 feet, 6 inches	18 feet	22 feet (two way)	2 feet, 6 inches
90°	9 feet	18 feet	20 feet (two way)	2 feet, 6 inches

***stall width and stall depth may be reduced for compact vehicles**

****minimum width of two-way drive aisles for stall angles of less than 90° shall be 20 feet; minimum width of for one-way drive aisles for stall angles of 90° may be reduced with approval by the City or County Engineer**

b. Queuing

The table in Sub-Section 4.5.6A details the required queuing for a variety of uses, including drive-in windows for banks, valet parking stands, etc. Some of these queuing requirements would require excessive pavement on a site. The following proposals are being requested for the table below:

- Reduce the queuing for bank tellers to match that of ATMs since these drive-through lanes are often parallel with one another.
- Reduce the queuing lanes for car lubrication and car washes to one space.
- Reduce queuing for gas stations. Requiring two queuing spaces for pumps at gas stations is impractical since the rear gas pumps are typically immediately behind them. Requiring only one queuing space, on either side of the pumps, is more in keeping with current practice.

	Minimum Spaces	Measured From
Automated teller machine	3	Machine
Bank teller lane	4 3	Teller or window
Pharmacy with Drive-thru	3	Window
Car lubrication stall	2 1	Entrance to stall
Car wash stall, automated	4 1	Entrance to wash bay
Car wash stall, hand-operated	3 1	Entrance to wash bay
Gasoline pump island	2-1	Pump island
Restaurant with Drive-thru	6	Pick-up window
Valet parking	3	Valet stand
Guards and gatehouses	See Section 4.4.8	
School drop-off (public and private)	Determined by City or County Engineer	
Day care and all other	Determined by City or County Engineer	

10. 4.6.7: Fences and Walls

The fence and wall regulations of the UDC have created some level of confusion among property owners. The proposal below would make no changes to this section; rather, it would reformat the section by adding headings and editorial commentary with the idea of making it more legible.

4.6.7 Fences and Walls

- A. **Retaining Walls.** Retaining walls are exempt from the following provisions.
- B. **Temporary Construction Fencing.** Temporary construction fencing around an active construction site that is removed within eighteen months of installation is exempt from the following provisions.
- C. **Front Yard Fencing.** No fence or wall located within eight feet of a public right of way or located in a required front yard setback may exceed four feet in height in the single-family or CA residential districts.

Commentary:

1. *Fences erected before January 1, 2011, are exempt from this section.*
2. *The length of a front yard setback varies by zoning regulation. Setback requirements are measured after the public right of way, which is often 10 feet from the curb of the street, as measured from the face of curb. See Section 3.6.1 to determine setback requirements in residential zones.*
3. *This rule is also subject to a lot's recorded subdivision plat.*
 - a. *Example: Ann wishes to build a fence along the western side of her property. She is zoned in a R8 residential zone that has a twenty-foot setback. Her neighborhood however has a thirty-foot required setback. Her fence must therefore not exceed four feet in height for the first forty-feet (thirty feet plus ten foot right of way) from the curb of the street. If Ann has a corner lot with two front yard setbacks indicated on her plan, the fence restrictions of Section 4.6.7 only apply to the setback along the "primary" street, or the street that the house faces. The Unified Development Code considers the other front yard setback as a "side street" setback.*
 - b. *See Shelby County Register of Deeds to find a recorded subdivision plat.*

- D. **Fence Height.** A fence or wall may not exceed nine feet in height in any required side or rear setback area.

E. Fence and Wall Materials

1. **Permissible Materials.** Fences and walls must be constructed of high quality materials, such as
 - a. Decorative blocks,
 - b. Brick,
 - c. Stone,
 - d. Treated wood, or
 - e. Wrought iron.
2. **Masonry Walls.** Masonry walls shall be constructed to allow the flow of water from one side of the wall to the other.
3. **Electrified Fences, Barbed Wire and Concertina Wire Fences**
 - a. Residential Districts. Electrified fences, barbed wire or concertina wire fences are not permitted in a residential district.
 - b. Non-Residential Districts. Barbed wire or concertina wire is permitted in an industrial district provided the barbed wire or concertina wire is located at least eight feet above the ground. Electrified fences are permitted in industrial districts. Electrified fences, barbed wire or concertina wire may be permitted in other non-residential zoning districts through the administrative deviation process (see Chapter 9.21).
4. **Chain-Linked Fences.** Uncoated chain-link fences are not permitted except in the EMP, WD and IH districts. Chain link fencing in all other districts must be galvanized, polyvinyl chloride (PVC) color coated in either black, dark green or dark brown color coatings and part of an evergreen landscape screening system. At the intersection of a driveway and a street and on all corner sites (the intersection of two streets), a clear sight triangle shall be established as set forth in Section 4.4.7.
5. **Fencing Along Public Streets.** The maximum length of a continuous, unbroken and uninterrupted fence or wall plane abutting a public right-of-way shall be 100 feet. Breaks shall be provided through the use of columns, permanent landscaped areas part of an evergreen landscape screening system, transparent sections or a change in material. This Paragraph shall not apply to properties in industrial zoning districts.

Commentary: Example: The eastern boundary of Adam's property runs for 300 feet along side a public road. A public right of way runs with any public street. He wishes to build a fence running the entire length. His fence must conform to the materials listed in Paragraph E(1) and every 100 feet must incorporate a column, evergreen shrubbery consistent with surrounding vegetation, or foot long sections of brick if the fence is primarily constructed out of treated wood.

6. **Keeping of Livestock.** Electrified fences or barbed wire is permitted in any zoning **district** for the keeping of livestock and chickens. When used in conjunction for the keeping of livestock other than chickens, uncoated chain-link fences are only permitted on lots of at least 5 acres in size. When used in

conjunction for the keeping of chickens, uncoated chain-link fences are only permitted outside of the required front yard.

- F. **Administrative Deviation.** The Planning Director may permit additional fence material, additional fence height, or reduced setback through the administrative deviation process if it is determined that such allowance is not contrary to the public interest and will not be injurious to the surrounding neighborhood. Factors to be considered by the Planning Director when making such an administrative deviation shall include the material, height or setback of fencing in the immediate vicinity of the subject site, the classification of the roadway abutting the subject site and the proposed use of subject site. (See Chapter 9.21).

11. 4.8.4B(2)(b)(3) & (4): Limited Outdoor Storage

The UDC identifies two types of outdoor storage: *limited* and *general*. While the more intense outdoor storage, general, is permitted to lie within a site's required side yard setbacks, the less intense outdoor storage, limited, is not. The proposal below would allow both types to be located in a side setback by deleting Sub-Items 4.8.4B(2)(b)(3) and (4):

~~4.8.4B(2)(b)(3): Limited outdoor storage may be located in the rear setback area.~~

~~4.8.4B(2)(b)(4): Limited outdoor storage may be located to the side of a building, provided it is not located within the required side setback area or required buffer.~~

12. 4.9: Temporary Signs and Signs for Schools and Places of Worship

Places of worship and schools are often located in residential zoning districts. This sometimes poses a problem with signage, since the sign code in the residential zoning districts is very restrictive. The sections of the Code cited below limits one ground sign per street frontage and further limits the total amount of square footage of all signs to 32 square feet. The proposal below would allow one sign per 300 feet of frontage and remove the absolute maximum on square footage for a site. This will prevent places of worship on large lots that seek more than one sign per frontage from the need of submitting \$1500 sign variance requests to the Board of Adjustment.

4.9.7B(4)(b): No more than one attached and one detached sign are permitted per frontage per lot, **except for sites that abut collectors and arterials where one attached sign and one detached sign are permitted for every 300 feet of frontage of said abutting collector or arterial.** Attached signs shall be limited to the name of the establishment only.

4.9.7B(2): The maximum gross surface area of signs in the Open Districts, Residential Districts, and Residential Work (RW) District may not exceed twelve (12) square feet, or twelve (12) square feet per acre of area of the lot, whichever is greater, up to a maximum of thirty-two (32) square feet **per sign.**

In addition, the proposal below would limit larger temporary signs in the single-family zoning districts to schools, places of worship, community services (such as police and fire stations) and parks.

4.9.9A(1)(c): **Temporary signs for schools, places of worship, community services and parks in the R-E, R-15, R-10, R-8, R-6, R-3, RU-1 and RU-2 Districts shall not exceed eight feet in height and 16 square feet in area for any parcel that is less than two acres and an**

additional 16 square feet for any parcel that is two acres or more. Temporary signs **for all other uses** in the R-E, R-15, R-10, R-8, R-6, R-3, RU-1 and RU-2 Districts shall not exceed five feet in height and seven square feet in area.

13. 5.2.11: Traffic Calming

This is a housekeeping item. The purpose of the section of the UDC cited below is to encourage traffic calming devices along neighborhood streets to slow traffic, but the traffic calming devices must be consistent and **not** introduce unexpected changes. Unexpected changes would not qualify as traffic calming devices as they may promote accidents.

5.2.11 Design Speed

Default speed is 25 mph with a stopping sight distance of 200 feet unless specific traffic calming geometrics are used. Use of low speed elements must be consistent throughout the length of the minor local street in order to maintain a constant design speed and **not** introduce unexpected vertical and horizontal direction changes. Speed limit and other necessary warning signs shall be installed per the approved signing plan.

14. 7.2: Zoning District Boundaries in the South Central Business Improvement District

Chapter 7.2 contains the regulations for the South Central Business Improvement District Special Purpose District, which itself contains seven separate zoning districts. Each section of the UDC that contains the regulations for these seven zoning district includes descriptions of their boundaries. It is unnecessary to list the boundaries for these zoning districts since they are graphically shown on the Zoning Map. In addition, a description in the text of the UDC prevents any expansion or change in these zoning districts to reflect changes in the neighborhood. This proposal will involve replacing the current geographically specific language in Sub-Sections **7.2.1A**, **7.2.2A**, **7.2.3A**, **7.2.4A**, **7.2.5A**, **7.2.6A** and **7.2.7A** with the following language: **“As indicated on the Zoning Map.”**

15. 8.6.3D(2), 9.1.8B, 9.2.2 and 9.3.4A: Procedural Review

a. 60-Day Review Period for Rejected Landmarks Cases

Paragraph 8.6.3D(2) of the UDC includes language regarding a 60-day review period for cases that have been rejected by the Landmarks Commission. The purpose of this section was to address projects that were pending before the Memphis City Council. Based on both an opinion by the Assistant City Attorney assigned to the Memphis City Council, Allan Wade, and the Landmarks Commission’s enabling legislation, appeals of decisions by the Landmarks Commission are not brought before the Memphis City Council, making the following language in strikethrough moot:

8.6.3D(2): In the event of a determination to deny a Certificate of Appropriateness, ~~the Landmarks Commission shall request consultation with the applicant for a period not to exceed 60 days for the purpose of considering modifications to the application in keeping with the determination criteria. If at the end of that time an acceptable solution has not been achieved, the Certificate of Appropriateness shall be denied. **no** subsequent application which is substantially the same shall be accepted for at least six months from the date of the final action.~~

This also affects the table in Section 9.2.2 and Sub-Section 9.3.4A. The “A” in the column with the heading “Governing Bodies” in the rows entitled “Certificates of Appropriateness” and “Historic District (Demolition by Neglect)” need to be deleted to bring the UDC into line with state law. It will also involve

changing the Required Hearings and Notification table in Sub-Section 9.3.4A to indicate appeals to the City Council are not permitted.

b. Technical Review Committee Review

The UDC contains conflicting language on which projects are routed to the Technical Review Committee (the "TRC") before being heard by the Land Use Control Board. Section 9.2.2 requires TRC review of Special Use Permit major modifications, but Item 9.1.8B(1)(b) stipulates that TRC review is left to the discretion of the Planning Director on a case-by-case basis. In addition, both sections of the UDC require TRC review of Planned Development major modifications. Since many Special Use Permit and Planned Development major modifications do not involve technical issues, it is recommended with this zoning text amendment that Section 9.2.2 be amended to change an "R" on the rows for Special Use Permit and Planned Development major modifications to a delta, "Δ," so that TRC review is not required for all cases. Section 9.2.2 also indicates an "R" for "Administrative Site Plan" and "Special District Administrative Review." These "R's" in these rows in should also be changed to deltas ("Δ") since the Technical Review Committee does not review administrative site plans unless they are for major projects (see existing language in Paragraph 9.1.8B(1)). Conversely, Planned Development major modifications should be moved from Item 9.1.8B(2)(b) to the list in Paragraph 9.1.8B(1), since such major modifications will require TRC review.

c. Newspaper Notification

The table in Section 9.2.2 conflicts with the table in Sub-Section 9.3.4A as to which requests require special newspaper publication for the hearings before the legislative bodies. Sub-Section 9.3.4A requires published notice in the newspaper for Text Amendments, Zoning Changes, Comprehensive Rezoning (including those related to incorporating FEMA Floodway and Floodplain Maps) and Historic District Designations. Those applications should be the only ones designated in 9.2.2 with a "D;" the rows for Right of Way Dedication and Vacation should be converted to a "D*." "D*" denotes that published newspaper notice is only required if opposition is present at Land Use Control Board.

16. 9.3.2B(5): Neighborhood Meeting Notification

This section of the UDC stipulates that neighborhood meetings shall be held no later than 10 days prior to the LUCB hearing and that notice for these meetings shall be mailed no later than 20 days prior to the LUCB hearing, but there is no minimum number of days set between neighborhood meeting and notification. The language below would require that the notice for neighborhood meetings be sent no later than 10 days prior to the date of the neighborhood meeting.

9.3.2B(5): If the notification package is determined to be complete by the Planning Director, the Office of Planning and Development shall mail the notification no later than 20 days prior to the hearing before the Land Use Control Board **and no later than 10 days prior to the date of the neighborhood meeting...**

17. 9.23.2: Appeals of the Land Use Control Board

The Land Use Control Board (LUCB) has final authority on a few items, such as subdivisions, special exceptions and correspondence cases, unless appealed to the Memphis City Council or Shelby County Board of Commissioners. The current UDC does not stipulate whether these appeals heard by the governing bodies are on the record or de novo. The proposal below would explicitly state that all appeals by the governing bodies are reviewed on the record; in other words, the Memphis City Council

and/or Shelby County Board of Commissioners will be reviewing the case based on the record and the Land Use Control Board's findings.

9.23.2

E. Governing Body Action

2. Appeals heard by the governing bodies shall be based on the record.

3. The governing bodies shall approve the appeal, approve with conditions, or deny the appeal. The governing bodies shall base their approval, approval with conditions or denial on the same approval criteria provided in this Code for the Land Use Control Board.

18. 12.3.1: Definitions

The following terms are found in the UDC, but are not defined. This proposal would add the following definitions:

Animal Hospital: A hospital dedicated to the treatment of animals.

Barber Shop: see Beauty Salon.

Beauty Salon: A duly licensed establishment in which hairdressing, makeup, and similar cosmetic treatments are carried out professionally.

Body Piercing: A business that engages in the piercing of the human body.

Catering Establishment, Large Scale: Any catering establishment with a kitchen of 5000 square feet or larger.

Catering Establishment, Small Scale: Any catering establishment with a kitchen of less than 5000 square feet.

Clerestory Window: A window that is at least six feet above the interior floor elevation whose purpose is to bring outside light, fresh air or both into a structure.

Dental Lab: see Medical Lab.

Flag Lot: A parcel having the configuration of an extended flag and pole. The pole represents access to the site which is usually located to the rear of another lot fronting the roadway.

Flush Mount: A CMCS tower where the antennae are applied directly to the tower. Antennae on a flush mount CMCS tower shall project no more than 30 inches from the exterior of the tower.

Inoperable Vehicle: A vehicle whose engine, wheels or other parts have been removed, altered, damaged or allowed to deteriorate so that it cannot be driven.

Medical Lab: A laboratory where tests are done on clinical specimens in order to get information about the health of a patient as pertaining to the diagnosis, treatment and prevention of disease.

Mortuary: See Funeral Establishment.

Pole Barn: A farm building with no foundation and with sides consisting of corrugated steel or aluminum panels supported by poles set in the ground.

Reverse Frontage: The frontage of a lot with two or more frontages that is adjacent to the rear façade of the structure that lies on the lot.

Shed: An accessory structure no larger than 200 square feet used for the storage of materials.

Storage Pod: A self-storage container no larger than 200 square feet.

Tattoo Parlor: A business that applies permanent tattoos to the human body.

Truck Farming: A farm that produces fruits or vegetables for the market.

Wind Farm: Any group of two or more wind towers.

Wind Tower: A standalone structure not mounted to a building that converts wind into energy.

19. Editorial Commentary

The following commentaries are offered to assist in the reading of the UDC:

3.8.5

Commentary

- i. *As of March 1, 2014, no development has been designated as an Open Space Subdivision and, as such, this section is not applicable to any current developments as of the above date.*
- ii. *For more information about the benefits of an Open Space Subdivision and process of designating a development as such, contact the Office of Planning & Development.*

3.8.6

Commentary

- i. *As of March 1, 2014, no development has been designated as a Sustainable Subdivision and, as such, this section is not applicable to any current developments as of the above date.*
- ii. *For more information about the benefits of a Sustainable Subdivision and process of designating a development, as such contact the Office of Planning & Development.*

3.7.2B

Commentary

There are no maximum density requirements for multi-family developments that are subject to this Article.

3.10.2B(after table)

Commentary

There are no maximum density requirements for multi-family developments that are subject to this Article.

4.1

Commentary

- i. *Developments that meet the thresholds of Chapter 4.1, with the exception of single-family dwellings, are subject to the administrative site plan review requirements of Chapter 9.12.*
- ii. *Developments that meet the threshold requirements under 4.1 but which are located within a required frontage standard, as governed by Section 3.10.3, or located within a Special Purpose District or Overlay District, as governed by Articles 7 and 8 respectively, are subject to the administrative site plan review requirements of Chapter 9.13.*